

SCHEDULE 4

Methods of securing shortfall in cases of serious underprovision

Appropriate letters of credit

2.—(1) The employer may secure the whole or part of the Article 60 shortfall by arranging, with the agreement of the trustees or managers of the scheme, for an appropriate letter of credit to be given to the trustees or managers which satisfies the requirements of this paragraph.

(2) In sub-paragraph (1) “appropriate letter of credit” means a guarantee in writing from a relevant institution that—

- (a) if a relevant insolvency event occurs in relation to the employer during the relevant period;
- (b) if the scheme begins to be wound up, or
- (c) in the case of a guarantee which terminates before the end of the relevant period, if the employer fails to secure a renewal of the guarantee before it expires,

then the institution will pay the trustees or managers a sum of an amount equal—

(i) in the cases mentioned in heads (a) and (b)—

- (I) to the amount specified in the letter as the maximum amount that the institution guarantees (“the specified maximum”), or
- (II) to the Article 75(1) shortfall,

whichever is less, and

(ii) in the case mentioned in head (c), to the specified maximum.

(3) In paragraph (2) “the relevant period” means the period beginning with the date on which the appropriate letter of credit is given and ending with—

- (a) the time it ceases to be in force;
- (b) the shortfall period;
- (c) the time when the Article 60 shortfall is first extinguished,

whichever occurs first.

(4) The appropriate letter of credit shall be given on terms under which—

- (a) it is to remain in force for a period of not less than 18 months, and
- (b) it may be renewed on an application made by the employer before the end of that period.

(5) Where an appropriate letter of credit has been given under sub-paragraph (1) to secure an amount following a serious shortfall valuation, the trustees or managers may accept a fresh appropriate letter of credit in substitution for it (or for any such letter previously accepted by them in substitution for it under this sub-paragraph) to secure that amount, notwithstanding that the period within which that amount may be secured in that manner has expired.

(6) Except as provided in this paragraph, an appropriate letter of credit shall not be capable of revocation or amendment during the shortfall period.